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POSITION PAPER ON PROPOSED RECOUNT REGULATIONS

The proposed recount regulations will lead to a perversion of the recount process and should be withdrawn for a complete rewrite. The proposed regulations ignore the legal and statutory difference between a recount as set forth in California Election Code section 15620 et seq. and an election contest as set forth in California Election Code section 16000 et seq.

A recount of the ballots cast is meant to be a smooth and efficient first step in determining the final outcome of a race under the supervision of the election official. An election contest is meant to be a thorough review of the conduct of the entire election under the supervision of a judge. If the proposed regulations are adopted in their current form, any voter requesting a recount as well as the election official responsible for the recount will be mutually frustrated in their desire to make a determination of the outcome as attorneys take over the process.

While not required by law, a recount is usually the first step in determining the outcome of an election. If issues arise during the recount, an election contest is the next step. Given the "election contest" nature of the proposed regulations, Napa County would need to request a deposit of \$50,000 under proposed 20815(a) which would equal our costs in an election contest that we had to defend over a supervisor race on the March 2004 primary ballot. No recount of that election was ever requested.

A recount is defined in section 15620 as "a recount of the votes cast . . ." Section 15625 states "The recount shall be conducted under the supervision of the elections official . . ." Section 15630 says "All ballots, whether voted or not, and any other relevant material, may be examined as part of any recount if the voter filing the declaration requesting the recount so requests." It is important to remember that the request for "relevant material" as part of the recount is by the voter who asked for the recount. However, the extent of the relevant material to be requested should be limited to those materials relevant to recounting votes in a manner consistent with the original counting process and to address questionable ballots cast. Section 15630 should not be broadly interpreted to allow the person requesting the recount to require production of materials that are only relevant in an election contest.

Section 16100 sets forth the grounds for an election contest. The relevant materials in support of any of these various grounds for challenging an election are substantially different from materials relevant to a recount :

“(a) That the precinct board or any member thereof was guilty of malconduct.

(b) That the person who has been declared elected to an office was not, at the time of the **election**, eligible to that office.

(c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his **election**, or has committed any other offense against the elective franchise defined in Division 18 (commencing with Section 18000).

(d) That illegal votes were cast.

(e) That eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote.

(f) That the precinct board in conducting the **election** or in canvassing the returns, made errors sufficient to change the result of the **election** as to any person who has been declared elected.

(g) That there was an error in the vote-counting programs or summation of ballot counts.”

A voter's request for materials relevant to a recount should not be confused with the parameters and materials that are relevant in an election contest under section 16100. A recount should not determine whether there were errors in conducting the election or canvassing the returns. A recount should not determine whether there was an error in the vote-counting programs or summation of the ballot counts. [The Superior Court's findings concerning relevant material in *Americans for Safe Access v. County of Alameda* are contrary to the logic of the recount versus election contest structure and should be overturned on appeal.] A recount should be limited to the ballots cast and the interpretation made by the election official of the voter's intent on any questionable ballot. If the voter requesting the recount is not satisfied with the recount process, that voter can become the contestant in an election contest under section 16000 et seq.

Finally, the Election Code makes specific reference to a recount that is not part of an election contest in section 15610: “If no **election contest** is pending wherein a recount of the ballots in a precinct has been or will be ordered, the **elections** official may order that the ballots voted in the precinct be publicly recounted . . .” Thus a recount carried out under the provisions of 15620 is shown to be of a different nature than a recount as part of an election contest.

I would respectfully request that the proposed regulations be withdrawn and rewritten to reflect the true nature of a recount as opposed to an election contest.